

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Biomedical Services, Inc. and Harold Crawford. Case 13-CA-39344

November 22, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case because the Respondent has withdrawn its answer to the complaint, effectively failing to answer the complaint's allegations, which therefore must be considered to be true. Upon a charge filed by Harold Crawford on May 8, 2001, the General Counsel issued the complaint on September 5, 2001, against Biomedical Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent filed an answer to the complaint on about September 20, 2001. On January 7, 2002, however, the Respondent withdrew its answer, stating that "Biomedical Services, Inc. is not contesting the allegations of the commission of any unfair labor practice charges as alleged by the charging party."

On January 31, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On February 5, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Although the Respondent filed an answer to the complaint, the Respondent advised the counsel for the General Counsel on January 7, 2002, that it was withdrawing its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., therefore the allegations in the complaint must be considered to be admitted to be true.¹

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Indiana corporation with an office and place of business in Merrillville, Indiana, has been engaging in the business of providing daily deliveries of pharmaceutical goods and pick up and delivery of medical supplies and equipment. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations derived gross revenues in excess of \$500,000 and provided services valued in excess of \$50,000 directly to points located outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Ray Umbaugh, manager, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about April 25, 2001, on two separate occasions, the Respondent, by Ray Umbaugh at the Merrillville facility, interrogated employees about their protected concerted activities.

On about April 27, 2001, the Respondent, by Ray Umbaugh, told employees that they did not have the right to speak for other employees.

On about April 27, 2001, Harold Crawford concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees.

On about April 28, 2001, Amanda Crawford concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees.

On about April 28, 2001, the Respondent terminated its employees, Amanda Crawford and Harold Crawford, and since that date has failed to reinstate them.

The Respondent terminated Amanda Crawford and Harold Crawford because they engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to

effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by terminating and refusing to reinstate employees Amanda Crawford and Harold Crawford, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. We also shall order the Respondent to make Amanda Crawford and Harold Crawford whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, we shall require the Respondent to remove from its files any references to the unlawful terminations and refusal to reinstate, and to notify the two employees in writing that this has been done and that the terminations will not be used against them in any way.²

ORDER

The National Labor Relations Board orders that the Respondent, Biomedical Services, Inc., Merrillville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their protected concerted activities.

(b) Telling employees that they do not have the right to speak for other employees.

(c) Terminating, refusing to reinstate, or otherwise discriminating against employees because they complain to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, and to discourage employees from engaging in these or other concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Amanda Crawford and Harold Crawford full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Amanda Crawford and Harold Crawford for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful terminations of Amanda Crawford and Harold Crawford, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Merrillville, Indiana, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 25, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 22, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² We recognize that in its January 7, 2002 letter withdrawing its answer, the Respondent alleged that it ceased operations in August 2001. The effect of the alleged closing on our standard reinstatement and make-whole remedies is an issue that may be resolved at the compliance stage of this proceeding.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their protected concerted activities.

WE WILL NOT tell employees that they do not have the right to speak for other employees.

WE WILL NOT terminate, refuse to reinstate, or otherwise discriminate against employees because they com-

plain to us regarding the wages, hours, and working conditions of our employees, and to discourage employees from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Amanda Crawford and Harold Crawford full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Amanda Crawford and Harold Crawford for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful terminations of Amanda Crawford and Harold Crawford, and WE WILL within 3 days thereafter, notify them in writing that this has been done, and that our unlawful conduct will not be used against them in any way.

BIOMEDICAL SERVICES, INC.